IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6443 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BIRLA VXL LIMITED - Petitioner(s)

Versus

COLLECTOR AND ADDITONAL SUPERINTENDENT OF STAMPS & 1 - Respondent(s)

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Appearance :

SINGHI & BUCH ASSO. for Petitioner(s) : 1,
MR HM Prachhak, AGP for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 17/01/2006

ORAL JUDGMENT

By way of this petition under Article 226 of the Constitution of India, the petitioner has challenged the legality and validity of the order passed by the Collector and Additional Superintendent of Stamps, State of Gujarat, Gandhinagar, dated

26.4.1999 by which the said authority has in exercise of power under Section 31 of the Bombay Stamp Act directed the petitioner to pay/deposit Rs. 4,50,050 towards stamp duty with regard to the document/Trust Deed considering the same as mortgage plus hypothecation and power of attorney.

2. It is the contention on behalf of the petitioner that before passing the impugned order dated 26.4.1999 no opportunity of being heard was given to the petitioner. No affidavit-in-reply and/or counter is filed denying the allegation that the impugned order has been passed without giving opportunity to the petitioner. Shri Prachhak, learned AGP is also not in a position to satisfy this Court whether before passing the impugned order the petitioner was heard or not. In absence of any counter to the petition by the respondents, the averment made in the petition with regard to opportunity of hearing not afforded to the petitioner is required to be accepted. In that case, the impugned order being in breach of principles of natural justice, the same requires to be quashed and set aside and the matter requires to be remanded to the Collector and Additional Superintendent of Stamps, State of Gujarat.

3. For the reasons stated above, the petition succeeds. The impugned order dated 26.4.1999

directing the petitioner to pay Rs. 4,50,050 towards stamp duty is hereby quashed and set aside and the matter is remanded to the Collector and Additional Superintendent of Stamps for deciding the matter in accordance with law and on merits after affording opportunity of hearing to the petitioner. The said exercise be done within the period of 6 months from the date of receipt of this order. It will be open for the petitioner to raise all contentions available under the law and the same may be considered and dealt with by the appropriate authority before taking final decision. It is, however, clarified that this Court has not expressed any opinion on merits of the case in favour of either party and the impugned order is quashed and set aside only on the ground that the same is in breach of principles of natural justice and it is ultimately for the Collector and Additional Superintendent of Stamps to take appropriate decision. Rule is made absolute with no order as to costs.

[M.R. Shah, J.]

RMR.